

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-07-SE-142
AST Telecom, LLC d/b/a	)	NAL/Acct. No. 200832100001
Blue Sky Communications	)	FRN # 0007435902

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 18, 2007**

**Released: October 22, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that AST Telecom, LLC d/b/a Blue Sky Communications (“Blue Sky”) apparently willfully and repeatedly violated Section 20.19(f) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to comply with the labeling requirements for digital wireless hearing aid-compatible handsets.<sup>2</sup> For Blue Sky’s apparent violations, and for the reasons discussed below, we propose a forfeiture in the amount of eight thousand dollars (\$8,000).

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications.<sup>3</sup> Among other actions, the Commission required manufacturers and digital wireless service providers to collectively take steps to increase the number of hearing aid-compatible handset models available, and established phased-in deployment benchmark dates for the offering of hearing aid-compatible digital wireless handset models.<sup>4</sup> In this regard, the Commission required entities within each of these classes that do not fall within the *de minimis* exception<sup>5</sup> to begin to offer digital wireless handset models with

<sup>1</sup> 47 C.F.R. § 20.19(f).

<sup>2</sup> The “labeling requirements” are two-part, mandating that the packaging for wireless hearing aid-compatible handsets display the technical rating of the handset and that an explanation of the technical rating system be included as an insert in the packaging material or incorporated in the owner’s manual for the handset.

<sup>3</sup> *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”). The Commission adopted these requirements for digital wireless telephones under authority of a provision of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

<sup>4</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; 47 C.F.R. § 20.19(c). In adopting these requirements, the Commission observed, *inter alia*, that “as wireless service has evolved to become increasingly more important to Americans’ safety and quality of life, the need for persons with hearing disabilities to have access to wireless services has become critical.” *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16757.

<sup>5</sup> See 47 C.F.R. § 20.19(e)(1)-(2). The *de minimis* exception applies on a per air interface basis, and provides that manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of the hearing aid compatibility rules. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in the U.S., the service provider would likewise be exempt from the hearing aid compatibility requirements. Manufacturers or mobile service providers that offer three digital wireless handset models must offer at least one compliant handset model. Mobile service (continued....)

reduced emission levels that meet at least a U3 rating<sup>6</sup> for radio frequency interference by September 16, 2005.<sup>7</sup> In connection with the offer of hearing aid-compatible handset models, the Commission also required entities to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.<sup>8</sup> In order to monitor efforts to make compliant handsets available, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (on May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006, and November 17, 2006), and then annually thereafter through the fifth year of implementation (on November 19, 2007 and November 17, 2008).<sup>9</sup>

3. In June 2005, the Commission reconsidered certain aspects of the *Hearing Aid Compatibility Order* and modified the preliminary handset deployment benchmark specific to Tier I wireless carriers (i.e., carriers with national footprints).<sup>10</sup> Specifically, the *Hearing Aid Compatibility Reconsideration Order* established that by September 16, 2005, Tier I wireless carriers must offer four digital wireless handset models per air interface, or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide, that meet a U3-rating.<sup>11</sup> The *Hearing Aid Compatibility Reconsideration Order*, however, did not modify the preliminary deployment benchmark or associated labeling requirements for Tier II or Tier III<sup>12</sup> wireless carriers. Tier II and Tier III wireless

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providers that obtain handsets only from manufacturers that offer three digital wireless handset models in the U.S. are required to offer at least one compliant handset model.

<sup>6</sup> Section 20.19(b)(1) of the Rules provides that a wireless handset is deemed hearing aid-compatible if, at minimum, it receives a U3 rating "as set forth in the standard document ANSI C63.19-2001[,] 'American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids.'" 47 C.F.R. § 20.19(b)(1). On April 25, 2005, the Commission's Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.10-2005. Thus, applicants for certification may rely on either the 2001 version or 2005 version of the ANSI C63.19 standard. See *OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005). In addition, we note that, since its 2005 draft version, the ANSI C63.19 technical standard has used an "M" nomenclature for the radio frequency interference rating rather than a "U," and a "T" nomenclature for the handset's inductive coupling rating, rather than a "UT." The Commission has approved the use of the "M" and "T" nomenclature and considers the M/T and U/UT nomenclatures as synonymous. See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221, 11238 (2005) (*"Hearing Aid Compatibility Reconsideration Order"*).

<sup>7</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; see also 47 C.F.R. § 20.19(c)(1)-(3).

<sup>8</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785; see also 47 C.F.R. § 20.19(f). In addition, to ensure that the rating information was actually conveyed to consumers prior to purchase, the Commission required digital wireless service providers to ensure that the U-rating of the handsets is available to such consumers at the point-of-sale, whether through display of the label, separate literature, or other means. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785.

<sup>9</sup> See *id.* at 16787; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (WTB 2004).

<sup>10</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238.

<sup>11</sup> See *id.* at 11232; see also *OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005).

<sup>12</sup> Tier II carriers are non-nationwide wireless radio service providers with more than 500,000 subscribers. Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847 (2002).

carriers that do not fall within the *de minimis* exception, therefore, were required to include in their handset offerings at least two U3-rated handset models per air interface, and to comply with the associated labeling requirements, by September 16, 2005.<sup>13</sup>

4. In the *Cingular Waiver Order* released on September 8, 2005, the Commission provided a measure of additional relief for entities that offer dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.<sup>14</sup> Pursuant to its waiver authority, the Commission ruled that it would accept, until August 1, 2006, the hearing aid compatibility compliance rating of the handsets for 1900 MHz operation as the overall compliance rating for the handset.<sup>15</sup> The Commission, however, imposed a number of reporting and consumer outreach conditions on carriers seeking to avail themselves of this temporary waiver relief.<sup>16</sup> Carriers taking advantage of the waiver are required, *inter alia*, to “ensure a thirty-day trial period or otherwise adopt an acceptable, flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets,” and must include detailed information in their November 17, 2005, and May 17, 2006, compliance reports “that describes and discusses with specificity efforts to ensure a thirty-day trial period or otherwise flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets.”<sup>17</sup> The Commission thus provided additional time for carriers and manufacturers to ensure that GSM digital wireless handsets operating in the 850 MHz band would be compliant with its rules when operating in that band. This action facilitated compliance with the deployment benchmark obligations by both manufacturers and carriers, including smaller, non-nationwide wireless carriers, that offer dual-band GSM digital wireless handsets.

5. On April 11, 2007, the Commission released the *Wireless Hearing Aid-Compatible Waiver Order*,<sup>18</sup> addressing waiver requests filed by nineteen Tier II and Tier III wireless carriers, including Blue Sky, for relief from the hearing-aid compatibility requirements for wireless digital telephones. In that *Order*, the Commission addressed each of the waiver petitions individually, and with respect to Blue Sky, denied its petition for limited waiver of Section 20.19(c)(2)(i)(A) of the Commission’s rules, filed September 16, 2005, as amended on April 11, 2006. In its September 16, 2005, waiver petition, Blue Sky<sup>19</sup> sought a six-month waiver of the September 16, 2005 compliance deadline, asserting that U3-rated GSM headsets were commercially unavailable.<sup>20</sup> Blue Sky also asserted its experience that, as a small Tier III wireless carrier lacking market power to deal directly with manufacturers, it could expect a several month delay in delivery of compliant handsets once they become available.<sup>21</sup> Blue Sky’s November 17, 2005 Report offered no information as to whether Blue Sky

<sup>13</sup> See 47 C.F.R. § 20.19(c)(2)(i).

<sup>14</sup> See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, *Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission’s Rules*, Memorandum Opinion and Order, 20 FCC Rcd 15108 (2005) (“*Cingular Waiver Order*”).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 15117-18.

<sup>17</sup> *Id.* at 15118.

<sup>18</sup> Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, *Petitions for Waiver of Section 20.19 of the Commission’s Rules*, Memorandum Opinion and Order, 22 FCC Rcd 7171 (2007) (“*Wireless Hearing Aid-Compatible Waiver Order*”).

<sup>19</sup> Blue Sky is the licensee of Cellular Station WQGD479 (Frequency Block A CMA733 – American Samoa).

<sup>20</sup> See Blue Sky Petition for Limited Waiver of Section 20.19(c)(2)(i)(B)(1) of the Commission’s Rules (filed September 16, 2005) at 1-2.

<sup>21</sup> *Id.* at 5-7.

elected to opt into relief offered pursuant to the *Cingular Waiver Order*, and stated “only one of the phones Blue Sky has been able to obtain from its third party vendor meets the Commission’s hearing aid compatibility requirements at this time.”<sup>22</sup>

6. On April 11, 2006, Blue Sky filed an amendment notifying the Commission that it had availed itself of the relief afforded to wireless carriers pursuant to the *Cingular Waiver Order*.<sup>23</sup> Further, Blue Sky stated, “[o]n March 13, 2006, Blue Sky obtained and has made available for sale two GSM handsets [the Nokia 6061 and the Motorola V3] meeting at least a U3 interference rating” and requested relief “only until March 13, 2006.”<sup>24</sup> On April 25, 2006, however, Blue Sky reported that “effective March 13, 2006, ... the Motorola V3 ... handsets ... which Blue Sky offers for sale, are not labeled with the performance rating of the handset and the associated packaging does not contain the technical specifications of the handset and description of the U-rating system.”<sup>25</sup> In its November 17, 2006 Report, Blue Sky stated that, of the two hearing aid-compatible handset models it offered [the Motorola V220 and the Motorola V3], the Motorola V3 handsets still did not include appropriate labels or inserts.<sup>26</sup>

7. The Commission found that Blue Sky failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver.<sup>27</sup> The Commission found that Blue Sky’s April 25, 2006 Letter and November 17, 2006 Report revealed that Blue Sky did not offer two compliant handsets until March 13, 2006 and that it still was not compliant with the associated labeling requirements as of November 17, 2006.<sup>28</sup> The Commission noted that Blue Sky never explained why, as of November 17, 2006, it had still failed to come into full compliance with the hearing aid compatibility requirements notwithstanding the ability of most other GSM carriers, including other Tier III GSM carriers, to come into compliance by this date. In this regard, the Commission found that Blue Sky offered no reason for its inability to provide the requisite labeling for the Motorola V3 handset.<sup>29</sup> Further, despite its failure to come into full compliance with the labeling requirements as of November 17, 2006, Blue Sky never requested an extension of its initial six-month waiver request, which would have expired on March 16, 2006. Thus, the Commission concluded that Blue Sky did not make the requisite showing to justify a waiver of the Commission’s hearing aid

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<sup>22</sup> See Blue Sky November 17, 2005 Report at 1.

<sup>23</sup> Blue Sky Amendment to Petition for Limited Waiver of Section 20.19(c)(2)(i)(B)(1) of the Commission’s Rules (filed April 11, 2006) at 1.

<sup>24</sup> *Id.* at 1 & n.2.

<sup>25</sup> See Letter from Michael R. Bennet, Esq., Bennet & Bennet, PLLC, to Angela E. Giancarlo, Public Safety & Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission (April 25, 2006) at 1 (stating that, effective March 13, 2006, the Motorola V220 handsets met the labeling requirements for hearing aid-compatible handsets, but the Motorola V3 handsets did not).

<sup>26</sup> See Blue Sky November 17, 2006 Report at 2.

<sup>27</sup> 22 FCC Rcd at 7185.

<sup>28</sup> *Id.* As noted above, Blue Sky represented in its April 11, 2006 Amendment that it was offering the Nokia 6061 handset as one of the two handsets it was offering to comply with the handset deployment requirement. In its May 17, 2006 Report, however, Blue Sky did not include the Nokia 6061 handset in the list of handsets it currently offers. The May 17, 2006 Report listed the Motorola V220 and the Motorola V3 as the two hearing aid-compatible compliant handsets. See Blue Sky May 17, 2006 Report at 1. Although its May 17, 2006 Report was filed only a little more than one month after the filing of its April 11, 2006 Amendment, Blue Sky offered no explanation for the discrepancy. *Id.* at n. 104.

<sup>29</sup> *Id.* at 7185.



compatibility rules, denied the petition, and referred Blue Sky's apparent violations of the hearing aid compatibility requirements to the Commission's Enforcement Bureau.<sup>30</sup>

### III. DISCUSSION

#### A. Failure to Comply with Labeling Requirements for Wireless Hearing-Aid Compatible Handsets

8. Section 20.19(f) of the Rules provides that wireless digital hearing aid-compatible handsets shall clearly display the U-rating, as defined in Section 20.19(b), on the packaging material of the handset and that an explanation of the technical rating system shall be included in the owner's manual or as an insert with the packaging material for the handset by September 16, 2005. As stated above, in the *Wireless Hearing Aid-Compatible Waiver Order*, the Commission determined that Blue Sky apparently failed to come into compliance with the labeling requirements for the Motorola V3 hearing aid-compatible handset it was offering until at least November 17, 2006 – over eight months beyond March 13, 2006, the date it was offering certified compliant handsets. Accordingly, we conclude that Blue Sky apparently willfully<sup>31</sup> and repeatedly<sup>32</sup> failed to comply with the labeling requirements in violation of Section 20.19(f) of the Rules.

#### B. Proposed Forfeiture

9. Under Section 503(b)(1)(b) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>33</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>34</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>35</sup> We conclude under this standard that Blue Sky is apparently liable for forfeiture for its apparent willful and repeated violations of Section 20.19(f) of the Rules.

10. Under Section 503(b)(2)(B) of the Act,<sup>36</sup> we may assess a common carrier a forfeiture of

<sup>30</sup> *Id.* at 7186.

<sup>31</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>32</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

<sup>33</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>34</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>35</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>36</sup> 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of* (continued....)

up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>37</sup>

11. The Commission’s *Forfeiture Policy Statement*<sup>38</sup> and Section 1.80 of the Rules do not establish a base forfeiture amount for violations of labeling requirements for hearing aid-compatible handsets set forth in Section 20.19(f) of the Rules.<sup>39</sup> Enforcement of these requirements is important to ensure that individuals with hearing disabilities have access to information that they need to make informed decisions as to which wireless telephone best meets their individual needs.<sup>40</sup> Moreover, as the Commission has observed, the number of Americans with hearing disabilities is growing, and so is wireless phone use.<sup>41</sup> We note that a base forfeiture amount of \$8,000 has been established for violations of the emergency accessibility rules.<sup>42</sup> The emergency accessibility requirements and the labeling requirements for wireless hearing aid-compatible handsets both serve the important goal of promoting public safety by ensuring that consumers with disabilities have access to information that they need.<sup>43</sup> Consistent with our recent decision in a similar case,<sup>44</sup> we view these violations as analogous and find that the \$8,000 base forfeiture amount is appropriate for apparent violations of Section 20.19(f). We find that Blue Sky failed to come into compliance with the labeling requirements for one of two handsets it was offering, until at least several months after the labeling requirements went into effect. Accordingly, we propose a forfeiture of \$8,000 for Blue Sky’s failure to comply with the labeling requirements for the

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*the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *see also* 47 C.F.R. § 1.80(c).

<sup>37</sup> 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>38</sup> *See The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>39</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>40</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785, *aff’d*, 20 FCC Rcd at 11238-39.

<sup>41</sup> *Id.* at 16786.

<sup>42</sup> *See* Fox Television Stations, Inc., Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 9847, 9852 (Enf. Bur., 2005); NBC Telemundo License Co., Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 9839, 9845 (Enf. Bur., 2005); Midwest Television, Inc., Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3959, 3966 (Enf. Bur., 2005), *consent decree issued*, 22 FCC Rcd 4405 (Enf. Bur., 2007).

<sup>43</sup> *See supra* n. 4.

<sup>44</sup> *See IT&E Overseas, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7660 (Enf. Bur., Spectrum Enf. Div. 2007). (response pending).

Motorola V3 wireless hearing aid-compatible handset.<sup>45</sup>

**C. Failure to Offer for Sale Two Hearing-Aid Compatible Handsets**

12. Section 20.19(c)(2)(i)(A) of the Rules requires digital wireless service providers to begin offering for sale at least two handset models with reduced emission levels that meet at least a U3 rating for radio frequency interference by September 16, 2005. As noted above, the Commission found that Blue Sky did not offer two handset models that are compliant with this requirement until March 13, 2006, approximately six months after the deadline.<sup>46</sup> The Commission further found that Blue Sky had failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver of this requirement.<sup>47</sup> Although we believe that a monetary forfeiture would be warranted for this violation, we note that the statute of limitations for proposing a forfeiture for this violation is one year from the date of violation.<sup>48</sup> Accordingly, based upon our review of the facts and circumstances in this case, and because we are barred by the one-year statute of limitations from proposing a forfeiture for this violation, we admonish Blue Sky for failing to begin offering two handset models with reduced emission levels that met at least a U3 rating for radio frequency interference by September 16, 2005, as required by Section 20.19(c)(2)(i)(A) of the Rules.

**IV. ORDERING CLAUSES**

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, AST Telecom, LLC d/b/a Blue Sky Communications (“Blue Sky”) **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 20.19(f) of the Rules.

14. **IT IS FURTHER ORDERED** that Blue Sky **IS ADMONISHED** for failing to begin offering two hearing-aid compatible handset models by September 16, 2005 in violation of Section 20.19(c)(2)(i)(A) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Blue Sky Communications **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and

<sup>45</sup> Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a NAL. *See also* 47 C.F.R. § 1.80(b)(4). Section 503(b)(6) does not, however, bar us from considering Blue Sky’s prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *See Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1828 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Blue Sky’s apparent violations that have occurred within the past year.

<sup>46</sup> 22 FCC Rcd at 7185.

<sup>47</sup> *Id.*

<sup>48</sup> *See* 47 U.S.C. § 503(b)(6); 47 C.F.R. § 1.80(c)(3).

FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

17. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>49</sup>

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Harley L. Rollins, AST Telecom, LLC d/b/a Blue Sky Communications ("Blue Sky"), 1500 Cordova Road, Suite 312, Ft. Lauderdale, FL 33322 and to Michael R. Bennet, Bennet & Bennet, PLLC, 10 G Street, N.E., Seventh Floor, Washington, DC 20002.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>49</sup> See 47 C.F.R. § 1.1914.